

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 United States of America,
5 Plaintiff

6 v.

7 Charles Edward Cooper,
8 Defendant

Case No. 2:14-cr-228-JAD-CWH

Order
[##28, 45]

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10 Charles Cooper was arrested from his backyard after his girlfriend was treated at a hospital
11 for injuries allegedly caused by Cooper (an ex felon) and told officers there were guns in their home.
12 Cooper moves to suppress his *Mirandized* post-arrest statements and the three guns recovered from
13 the home pursuant to a warrant, arguing that his statements are the fruit of his unlawful, warrantless
14 in-home arrest and that the search warrant was issued upon reckless misrepresentations by the
15 officer.¹

16 After an evidentiary hearing, Magistrate Judge Hoffman issued an 11-page report and
17 recommendation in which he (1) agrees Cooper's arrest was constitutionally improper but concludes
18 that Cooper's post-arrest statements were not tainted by that illegality because the questioning
19 happened outside the home as *New York v. Harris*² permits, and (2) concludes that the search-
20 warrant affidavit does not contain intentionally false or misleading statements.³ Cooper objects to
21 the magistrate judge's assessment of the evidence.⁴ Having reviewed the papers and the evidentiary
22 record *de novo*, I agree with and adopt Magistrate Judge Hoffman's findings and conclusions and
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24 ¹ Doc. 28. The government opposed the motion, and Cooper filed a reply. Docs. 31, 34.

25 ² *New York v. Harris*, 495 U.S. 14 (1990).

26 ³ Doc. 45.

27 ⁴ Doc. 52. The government responded to the objections. Doc. 56.

1 accept his recommendations, overrule Cooper's objections, and deny Cooper's motion to suppress.

2 Discussion

3 When a magistrate judge provides findings and recommendations in a criminal case, the
4 district judge "may accept, reject, or modify the recommendation, receive further evidence, or
5 resubmit the matter to the magistrate judge with instructions."⁵ Local Rule IB 3-2(b) only requires
6 de novo consideration of specific objections. The standard for reviewing unobjected-to sections is
7 left to the district judge's discretion.⁶

8 Cooper's objections to Magistrate Judge Hoffman's report and recommendation can be
9 distilled to these: (1) the judge improperly relied on the officers' mere belief they had probable cause
10 and the record shows the police had, at best, a suspicion that the individual in the backyard had
11 committed a crime before arresting Cooper—both of which fall short of probable cause; (2) *New*
12 *York v. Harris* does not save Cooper's statements from exclusion because he was still within sight of
13 his home while police were entering it; and (3) the judge ignored "troubling facts" that showed the
14 search-warrant affidavit contained material misrepresentations that could not be cured.⁷ I review the
15 now-challenged portions of Magistrate Judge Hoffman's report and recommendation de novo and
16 consider the remainder of it under an abuse-of-discretion standard.⁸

17 A. Objection 1: the record does not support probable cause

18 Cooper first challenges the magistrate judge's conclusion that officers had probable cause to
19 arrest Cooper. He contends that the judge overlooked (1) officers' testimony that, when they left the
20 hospital, they intended to continue their investigation by speaking to Cooper and (2) the fact that

22 ⁵ Fed. R. Crim. P. 59(b)(3).

23 ⁶ *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003) (emphasis in
24 original) (a "district judge must review the magistrate judge's findings and recommendations de
25 novo if objection is made, but not otherwise.").

25 ⁷ Doc. 52.

26 ⁸ I consider Cooper's motion to suppress, Magistrate Judge Hoffman's report and
27 recommendation, all related briefing, the evidentiary hearing transcript, all exhibits, and Cooper's
28 subsequent affidavit. Docs. 28, 31, 34, 45, 48, 52–53, 56.

1 officers had not verbally confirmed Cooper's identity before the seizure because he was asleep.⁹ He
 2 also notes that an officer's subjective belief that he had probable cause is irrelevant in the probable-
 3 cause determination.¹⁰

4 But Magistrate Judge Hoffman did not rely on any officer's subjective belief in concluding
 5 that probable cause existed,¹¹ and neither of these alleged oversights undermines the probable cause
 6 determination because the unchallenged portions of the evidentiary record supports the existence of
 7 probable cause for Cooper's battery arrest. The record is replete with evidence that Cooper beat his
 8 girlfriend, M. Basolo. Police were dispatched to the hospital emergency room in response to a 911
 9 domestic-violence call, where they met Basolo. Basolo provided verbal and written statements that
 10 Cooper "beat [her] ass" and was asleep in the backyard of their shared home, her daughter confirmed
 11 the assault had occurred, police observed injuries on Basolo's face and body that corroborated the
 12 reports, and they found Cooper asleep in the backyard as foretold. Even if officers left the hospital
 13 with the intent to perform additional investigation before arresting Cooper, nothing more was
 14 necessary to validate the arrest with probable cause.

15 **B. Objection 2: *New York v. Harris* does not save Cooper's statement from exclusion**
 16 **because Cooper was in view of the house when he gave his statement.**

17 Cooper next objects to the magistrate judge's conclusion that *New York v. Harris* saves his
 18 statement from exclusion. He argues that because he was situated in the patrol car outside the house
 19 and was still able to observe the police going in and out of the house makes this case more like
 20 *United States v. Shetler*, *United States v. Crawford*, and *United States v. Nora*,¹² which, he contends,

23 ⁹ Doc. 52 at 8.

24 ¹⁰ *Id.*

25 ¹¹ *See generally* Doc. 45.

26 ¹² *United States v. Shetler*, 665 F.3d 1150, 1158 (9th Cir. 2011); *United States v. Crawford*,
 27 372 F.3d 1048 (9th Cir. 2004); *United States v. Nora*, 765 F.3d 1049 (9th Cir. 2014).

1 recognize that “statements made just outside the home should be suppressed.”¹³

2 To make this argument, Cooper improperly conflates the very distinct rules regarding illegal
3 *detentions* and illegal *searches*. As the Ninth Circuit panel wrote in *Shetler*, “Although the presence
4 of probable cause may generally be the ‘dispositive’ issue in determining whether a confession
5 stemming from an illegal detention should be suppressed, ‘the analysis that applies to illegal
6 detentions differs from that applied to illegal searches.’”¹⁴ Both *Shetler* and *Nora* stand for the
7 proposition that a confession obtained after the defendant observes an illegal search yielding
8 evidence may be tainted because “Confronting a suspect with illegally seized evidence tends to
9 induce a confession by demonstrating the futility of remaining silent.”¹⁵

10 But Cooper’s statements did not come on the heels of an illegal search. The search of his
11 home did not occur until later and after police secured a warrant. And even if Cooper may have
12 believed that police were searching his home as the entered and exited it to take photographs of
13 Basolo’s injuries, there was no illegally seized evidence he could have observed to lead him to
14 conclude his silence was futile. *Nora* and *Shetler* are thus inapposite.

15 *Crawford* also does not aid Cooper’s argument. The *Crawford* court noted that “*Harris*
16 demonstrates that for testimony or evidence to be considered the fruit of an illegal search, it must be
17 directly or indirectly attributable to the constitutional violation” and warned that “sequence should
18 not be confused with consequence.”¹⁶ It then held that an illegal search of the defendant’s home that
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21 ¹³ Doc. 52 at 11.

22 ¹⁴ *Shetler*, 665 F.3d at 1158 (quoting *Crawford*, 372 F.3d at 1056).

23 ¹⁵ *Id.* (quoting 6 Wayne R. LaFare, *Search and Seizure* 307, § 11.4(c)(4th ed. 2004)); *see also*
24 *Nora*, 765 F.3d at 1057 (citing *Shetler* and reasoning that “Nora’s incriminating statements followed
25 immediately on the heels of the unlawful search of his person, which yielded marijuana and a large
26 amount of cash [so] . . . his answers were likely influenced by his knowledge that the police had
already discovered” that evidence).

27 ¹⁶ *Crawford*, 372 F.3d at 1058 (quoting *United States v. Duchi*, 944 F.2d 391, 395 (8th Cir.
1991)).

1 “produced no evidence whatsoever” lacked the necessary connection to his subsequent confession.¹⁷
 2 Because the search that Cooper may have imagined was going on while he sat in the patrol car was
 3 fruitless, it similarly cannot be said to have caused his confession. *Harris* holds that “where the
 4 police have probable cause to arrest a suspect, the exclusionary rule does not bar the [government’s]
 5 use of a statement made by the defendant outside of his home, even though the statement is taken
 6 after an arrest made in the home in violation of *Payton* [*v. New York*].”¹⁸ The Magistrate Judge
 7 properly applied that rule here.

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 9 **C. Objection 3: The magistrate judge ignored several troubling facts to conclude that the
 warrant affidavit did not contain material misrepresentations.**

10 Finally, Cooper challenges the magistrate judge’s conclusion that the affidavit used to
 11 procure the warrant for the search of his home did not contain reckless misrepresentations.¹⁹ Cooper
 12 contends that there were two key factual misrepresentations: (1) that Basolo stated there is a “black
 13 pump action shotgun” inside the house, when the testimony at the evidentiary hearing supported only
 14 a report of a “black shotgun,” and (2) that Basolo stated there were at least two additional handguns
 15 in the house that she had seen with Cooper and that she did not purchase, when the hearing
 16 testimony supported only the first half of that statement—that there were two handguns in the
 17 house.²⁰

18 The evidence elicited at the evidentiary hearing did not establish that these embellishments
 19 identified by Cooper were material misrepresentations. And even if these statements had been
 20 excised from the affidavit, the remaining information would still support the probable-cause
 21 determination necessary to validate the search. Accordingly, I agree with the magistrate judge’s
 22 conclusion that the affidavit in support of the search warrant did not contain intentionally false or
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24 ¹⁷ *Id.*

25 ¹⁸ *Harris*, 495 U.S. at 21.

26 ¹⁹ Doc. 45 at 10–11; Doc. 52 at 17–21.

27 ²⁰ Doc. 52 at 17–21.

1 misleading statements.

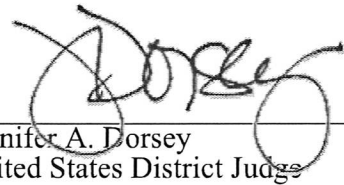
2 In sum, having reviewed *de novo* all portions of the magistrate judge's report and
3 recommendation to which Cooper has raised an objection, I overrule Cooper's objections. I have
4 also reviewed all remaining portions of the report and recommendation for abuse of discretion and
5 find none. Accordingly, I adopt Magistrate Judge Hoffman's findings, conclusions, and
6 recommendations in their entirety and deny Cooper's motion to suppress.

7 **Conclusion**

8 It is THEREFORE ORDERED that Magistrate Judge Hoffman's report and recommendation
9 **[Doc. 45] is ADOPTED** in its entirety and defendant Charles Cooper's objections **[Doc. 52] are**
10 **overruled.**

11 It is FURTHER ORDERED that Cooper's motion to suppress **[Doc. 28] is DENIED.**

12 DATED May 29, 2015.

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15 Jennifer A. Dorsey
16 United States District Judge
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